Equality and Human Rights Commission

Minutes of the 94th meeting of the Board of the EHRC

11 March 2021 (10:00-13:00)
Via video conference using WebEx

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Attending

Commissioners

Baroness Kishwer Falkner (Chairwoman); Caroline Waters (Deputy Chair); Suzanne Baxter; Jessica Butcher; Pavita Cooper; David Goodhart; Alasdair Henderson; Susan Johnson; Helen Mahy; Lord Bernard Ribeiro; Dr Lesley Sawers and Su-Mei Thompson.

Officers

Erica Boardman, Acting Director - Communications and Engagement (item 9)
Cath Denholm, Executive Director - England and Corporate Improvement and Impact
Melanie Field, Executive Director – Strategy, Policy and Wales
Carla Garnelas, Senior Principal – Strategy Hub (item 10)
Alasdair MacDonald, Director – Policy (item 9)
Callum MacInnes, Principal – Corporate Governance
Bill Malloy, Director – Finance, Procurement, PEU and Governance
Alastair Pringle, Acting Chief Executive
Luke Taylor, Director – Evidence and Strategy Hub (item 10)
Sarah Whelan, Senior Associate – Corporate Governance
Erika Schmidt, Senior Associate – Policy (Observer)

Guests

Martyn Jones, Interim Chair - EHRC Wales Committee
Marcus Bell - Equality Hub
Kemi Badenoch - Minister for Equalities (item 11)
Bryony Bonner - Minister's Assistant Private Secretary for Equalities (Item 11)
Daniel El Gamry – Special Assistant to Minister for Equalities (Item 11)

1. Chair's introduction

1.1 The Chairwoman welcomed attendees. Martyn Jones continued to attend as Acting Chair of the Commission's Wales Committee, pending the appointment of a Wales Commissioner. Alastair Pringle attended as acting Chief Executive. Marcus Bell joined from the Equality Hub and Kemi Badenoch, Minister for Equalities would be joining the meeting at 12:30pm.

2. Apologies for absence

2.1 Mark McLane and Rebecca Hilsenrath sent apologies.

3. Declarations of interest

3.1 No declarations were made additional to those already registered.

4. Minutes and correspondence

4.1 The minutes of the 13 January 2021 93rd Board meeting (EHRC 94.01), and the Board call of 17 February 2021 (EHRC 94.02) were agreed as accurate records.

4.2. The Chairwoman reminded the Board of the following items considered / agreed via correspondence:

4.2.1 On 27 January 2021 Commissioners were sent the Commissioner skills survey to complete. The results will be used to inform Board development activities, the matching of Commissioners to areas of work and conversations with the UK Government around the desired skills and attributes of new Board members. Commissioners will be contacted regarding activities and training in due course.

4.2.2 At the Board call on 17 February 2021, the Board agreed to defer gender pay gap reporting for six months, in recognition of the pandemic, this allows employers an additional six months to report their 2020 / 21 data. The Chairwoman advised that she was pleased to report that she had been able to correct a misconception at the Joint Committee on Human Rights evidence session on 10 March, where they thought that pay gap reporting had been cancelled rather than delayed, and that she was very comfortable with the decision made.

4.2.3 On 19 February 2021 the Board was asked to agree the proposal to move to a pattern of more regular, shorter, Board meetings. The proposal had been agreed, however, some potential issues had been raised. The Corporate Governance Team would contact Commissioners in due course to agree new dates for 2021-22 and would consider how best to address the concerns identified.

5. Actions Arising

5.1 The Chairwoman provided an update on the following actions (EHRC 94:03), which the Board were content with:

5.1.1 Reassessing Committee and Commissioner Working Group (CWG) (92/6.1) membership is ongoing. Commissioners will be contacted confirming which groups and Committees they are being asked to serve on in due course;

5.1.2 Engagement with the Department of Health and Social Care (93/10.3.3) is ongoing. Stakeholder meetings are taking place to gather the latest external views on the Government Paper 'Integration and Innovation: working together to improve health and social care for all';

5.1.3 The Commission is still waiting for the formal result of the spending review settlement (93/11.2.3) and the Board will be kept informed; and

5.1.4 Stakeholder engagement with Commissioners and Committee members (91/9.3) is ongoing. An update on the DAC review and outcome of the interviews will be provided to the Board in May 2021.

5.2. The Board agreed that the remaining actions (EHRC 94.03) were either complete or progressing satisfactorily.

6. Committee and Commissioner Working Group (CWG) updates

6.1 **The Scotland Committee** had welcomed four new Committee members to their 03 March 2021 meeting, where they had brought valued lived experience to the table. Further updates included that:

6.1.1 The final report of the National Taskforce for Human Rights Leadership in Scotland will be published 12 March 2021 and shared with Board members. Its recommendations will include that the next Scottish Government seeks to incorporate a number of treaties into domestic law. Alastair Pringle, Executive Director Legal, Compliance and Scotland has been a member of this taskforce supported by colleagues. The Commission has provided its expert knowledge as a National Human Rights Institution to the discussions. **Action: Sarah Whelan to circulate the report to the Board on 12 March 2021.**

6.1.2 The Scotland Commissioner advised that as Board meetings would shortly be moving to a monthly schedule, the three nations reporting structure needs to reflect this change to ensure the reporting mechanisms are consistent between Scotland and Wales Committees. **Actions: Sarah Whelan to co-ordinate with Private Office to set up a meeting between Lesley Sawers, Alastair Pringle and Martyn Jones. Sarah Whelan to meet separately with Committee Secretaries.**

6.2 The **Wales Committee** had met on 25 February 2021 when they discussed the Commission's role in public debates from a Welsh viewpoint. Committee

members would like an opportunity to discuss further. Further updates included:

6.2.1 There has been an amendment made to the socio-economic duty (SED as of 09 February 2021. The Regulations will amend section 1(3) of the Equality Act 2010 by adding relevant Welsh public authorities to the list and the SED is due to come into force in Wales on 31 March 2021;

6.2.2 Meetings had taken place with the Future Generations Commissioner and other equality bodies to improve partnership working;

6.2.3 The Welsh Government is commissioning academic research to investigate mechanisms to strengthen and advance equality and human rights in Wales, and to make recommendations for legislative, policy, guidance, or other reforms to meet this objective. One option could potentially be a human rights bill. The final report is due shortly. Commitments from Welsh political parties should become clearer when their manifestos are published ahead of the May 2021 elections;

6.2.4 The Welsh Government has developed a race equality action plan to understand the reasons for the higher risk of coronavirus among BAME communities. The Commission needs to be mindful of the possible differences of approach with the UK Government; and

6.2.5 EHRC Chairwoman, Kishwer Falkner had a positive meeting with Deputy Minister Jane Hutt AM on 10 March 2021, to discuss respective priorities and identify shared agendas.

6.3 **CWG - Human Rights Monitoring:** members were advised that there are risks facing the Commission's Human Rights Monitoring work in the next financial year, as a result of the busy upcoming United Nations reporting calendar and continuing uncertainty around the impact of Covid-19. A paper had previously been provided to Board.

6.4 **CWG - Is Britain Fairer (IBF)**: members were updated that three interim products for 2021 / 22 are being developed. This will include evidence reports on: the experiences of victims of sexual violence in the criminal justice system, delivered in partnership with the Victims' Commissioner; and the future of work, specifically relating to the impact of the epidemic. The CWG would like the Board's input on the topic of focus for the third product and on the discussion of setting up an external reference group. The CWG Chair will consult the EHRC Chairwoman to determine the timing of the discussion with the Board. **Action: Sarah Whelan to update and discuss further with CWG IBF lead Rebecca Newsome and co-ordinate with Private Office to set up a meeting for the CWG Chair to meet with the EHRC Chairwoman.**

6.5 **People and Workspaces Committee** - had met on 03 February 2021, where discussion included: agreement of the corporate services priorities for 2021; the increase in mental health related illness; the launch of the employee code of conduct; and the positive results from the EmBrace programme, such as a colleague being promoted and moving to a more senior post in the Civil Service. Committee members will meet for an additional deep dive session on performance management, succession planning and talent management and the outcome brought to Board. An assurance paper went to the Audit and

Risk Assurance Committee before their meeting on 22 February 2021 and this will be a standing agenda item at ARAC meetings.

6.6 **Audit and Risk Assurance Committee** - had met on 22 February 2021, where discussion included: a deep dive on cyber security and disaster recovery; the outcome of internal phishing tests results; the financial underspend and ways to improve this going forward; that the strategic risk register will need updating in line with the new strategic plan and that there had been a positive internal audit report on information governance.
Action: Sarah Whelan to share all Committee minutes with the Board.

7. Chief Executive report

7.1 Prior to the meeting the Board considered the following issues via the CEO's report (EHRC 94.05): performance of work under each priority aim; plans to finalise the delivery of the business plan; an update on legal investigations and inquiries; the proposal to move to more regular, shorter, Board meetings; the people survey and wellbeing webinars; estates and office re-opening plans and an update on the external review of the senior structure.

7.2 Due to time constraints at the meeting, it was agreed that the acting Chief Executive would update Commissioners further via the weekly update email.
Action: Alastair Pringle to cover in weekly email.

8. Finance report

8.1 Members noted the 2020 / 21 budget allocations and the current financial outturn position with associated risks. Members fed in the following points:

8.1.1 They appreciated that the underspend was not ideal, but that the Finance team had worked hard with others across the organisation to get the underspend down. Going forward the team will look at how to further strengthen the arrangements to address underspend issues at quarter 4 (October-December) by looking proactively look at how the Commission manages budgets throughout the year;
8.1.2 that they were not unduly concerned given this is a common issue across other Arm's Length Bodies (ALBs) and government due to the impact of the pandemic; and
8.1.3 queried whether all 'ready to go' projects had been brought forward and were assured by the Executive that current work had been magnified and any work in quarter 1 (April - June) 2021 has been brought forward where feasible.

9. Principles for the EHRC's role in public debates

9.1 The Board considered the paper (EHRC 94.04) and agreed with the three linked roles that the Commission should adopt: 1) convenor and arbiter of

balance of rights debates; 2) authoritative analyst of systemic issues; and 3) thought leader. Members flagged the following key areas and agreed the following:

9.1.1 **The Commission's role and narrative**: The need to define and clarify the Commission's role as an enforcer / regulator alongside being an arbiter of balance of rights, whilst considering what aspects have the most impact. That the Commission needs to have a clear narrative which sets out its key role in a way that shows how its work is relevant to large groups of society as well as small marginalised groups;

9.1.2 **The relationship between lived experience and quantitative evidence**: The Commission should gather evidence and data then fill in the gaps with lived experience, but be mindful that when the evidence / data is not available lived experience should be considered as subjective data. In addition, look specifically at the evidence / data that shows how people have been impacted as a result of having a difference of view from the prevailing mood in society;

9.1.3 **Challenging role of thought leadership**: The need to consider reserving thought leadership aspects for reactive responses whilst taking into account how the historical background of the Commission (including legacy Commissions) can impact the debates it engages in now. There was a request to include risk appetite into the Commission's role in public debates in the next discussion at Board on the strategic plan; **Action: Strategy Hub to include risk appetite in the May 2021 Board paper.**

9.1.4 **Use of language and communication messaging**: The Commission should consider ways of getting involved with polarised debates whilst taking on board freedom of speech implications. Members requested that consideration should be given to how Commissioners' own individual perceptions can impact the language they use when speaking publicly and how the Commission can support them from any negative media attention. There is also a need to ensure the strategic plan addresses false and distorted claims against equality and human rights;

9.1.5 **The importance of partners and stakeholders**: The Commission should work jointly with partners to get a stronger message across, whilst developing and maintaining good relationships with stakeholders and parliamentarians in order to be their first point of contact with polarised debates and / or in relation to interventions.

9.1.6 **National and regional divergence**: That there is a need to be mindful of the pitch across nations and regions and whilst the Commission needs to be seen as consistent across Great Britain, research needs to be carried out across nations and regions to find out more about what policy divergence exists.

9.2 The National Audit Office's judicial review regarding a question on a person's sex in the census was raised during this discussion. Commissioners were unclear what the Commission's involvement had been. Members were informed that Fair Play for Women had been in contact with the Commission about this. **Action: Melanie Field to provide an update to the Board about**

the FPFW judicial review, setting out any implications in respect of any positions taken by the Commission.

10. Strategic plan 2022-25

10.1 The Board considered the papers (EHRC 94.07a and 94.07b) and agreed to the use of the current three strategic goals and core aim as an underpinning framework.

10.2 More discussion / internal thought was felt to be required in respect of the following areas: the Commission's role and its capabilities to deliver the plan, taking into account resource at an early stage, as well as how the Commission can achieve quicker reactive communications that nudge public conversation but do not require large pieces of resource intensive work. **Action: Suzanne Baxter to draft recommendations and share with the Strategy Hub.**

10.3 Specific discussion focused on the choice of themes as set out under 5.2.4 (EHRC 94.07a). Members agreed further consideration needs to be given to: whether the Commission is best placed to be heavily involved with mental health and equality issues; to have a clear plan for the long term cultural trends of social cohesion / polarisation; to be more selective and focus on areas where the Commission can uniquely have more impact whilst allowing flexibility to be reactive when required. The Board also discussed climate change as an area for consideration and mentioned relevant work by ACEVO (Association of CEOs of Voluntary Organisations) who are shortly launching a call to the third sector to sign up to a pledge to reframe climate change through a social justice lens.

10.4 Members queried the timeline of the plan, specifically whether the public consultation over the summer period was practical given this is the holiday period for many. Members were advised that the consultation will be structured differently this time, including roundtables with groups of stakeholders to enable discussion on an agreed set of high level themes, and provide a clear rationale for their selection early on. **Action: Strategy Hub to provide more detail on the consultation plans at the May 2021 Board meeting.**

10.5 Commissioners were asked for their interest in joining a small reference group who will act as a 'sounding board' for staff in between official Board meetings. **Action: Sarah Whelan to work with the Strategy Hub to agree the approach to identify Commissioners.**

10.6 **Overarching action: Strategy Hub to incorporate the discussion points 10.1-10.6 above into the paper to be brought to the Board in May 2021.**

11. Introduction from Kemi Badenoch, Minister for Equalities

11.1 Kemi Badenoch, shared her views on the work of the Commission and the current state of equalities. Discussion included: the importance of the UK Government and the Commission working constructively together; that equality has a new significance and prominence including an increase in pluralised and divisive debates and she was keen that the Commission provides a clear and evidence based position to help move these divisive debates forward in a constructive and evidence-based way.

12. Any other business

12.1 With no other business being raised, the Chairwoman thanked Board members and staff for their contributions, and drew the formal meeting to a close.

12.2 The May Board (95th) meeting would take place on 13 May 2021.